

REMARKS

In an earlier decision of the Board of Appeals, the Board found that the original combination of Yamazaki et al. and Van Den Ende et al. with or without Van Loo et al. fails to teach or suggest the claimed invention. The Application has been remanded to the Examiner to establish that the IRM provides the evidence missing from the original combination to achieve or render obvious the claimed invention. In the words of the Board the "IRM may be a very critical evidentiary document". The Board, having instructed the Examiner "obviousness determinations are fact-intensive. It stands to reason that English language translations of foreign language documents will provide more facts".

It is submitted the English translation of the IRM provided by the Examiner fails to provide, as the Board previously characterized the "very critical evidentiary" information missing from the original combination to achieve or render obvious Applicants' claimed invention.

The Examiner refers to the translation of the IRM document as providing the missing teachings. However, the Examiner fails to identify specifically where the missing teaching is provided in the translation.

Even assuming arguendo the translation of the IRM document supports the Examiner's position that the temperature in Ukkell never dropped below -0°C except for two days in December, 1994, it is submitted that the temperature conditions for Ukkell are not representative of the temperature conditions for Heverlee. As can be seen from the attached printout from <http://maps.google.com>, Ukkell and Heverlee, Belgium are separated by thirty kilometers (Exhibit A). And, Heverlee has an altitude of 111 feet (Exhibit B) while Ukkell has an altitude of 341 feet above sea level (Exhibit C). Significantly, live temperature readings for

HAYES SOLOWAY P.C.
3450 E. SUNRISE DRIVE,
SUITE 140
TUCSON, AZ 85718
TEL. 520.882.7623
FAX. 520.882.7643

—
175 CANAL STREET
MANCHESTER, NH 03101
TEL. 603.668.1400
FAX. 603.668.8567

Ukkell and for Heverlee at the approximate same time of day (Exhibits D and E) show a 2°C (3.6°F) difference between the two cities! Accordingly, it is submitted that translation of the IRM fails to supply the "very critical evidentiary" missing teachings to the combination to achieve or render obvious Applicants' claimed invention.

Since the Board has previously ruled that the original combination of Yamazaki et al. and Van Den Ende et al. with or without Van Loo et al. fails to render any Applicants' claims obvious, it is submitted the Examiner has failed to satisfy the burden of establishing a *prima facie* case of obviousness.

Having dealt with all the objections raised by the Examiner, the Application is believed to be in order for allowance. Early and favorable action is respectfully requested.

In the event there are any fee deficiencies or additional fees are payable, please charge them (or credit any overpayment) to our Deposit Account Number 08-1391.

Respectfully submitted,

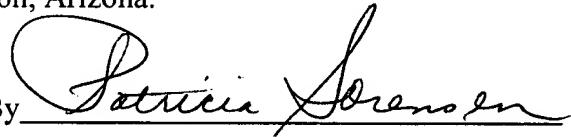


Norman P. Soloway
Attorney for Applicant
Reg. No. 24,315

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I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: MAIL STOP AMENDMENT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

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HAYES SOLOWAY P.C.
3450 E. SUNRISE DRIVE,
SUITE 140
TUCSON, AZ 85718
TEL. 520.882.7623
FAX. 520.882.7643

175 CANAL STREET
MANCHESTER, NH 03101
TEL. 603.668.1400
FAX. 603.668.8567